

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
STATE OF OHIO)
)
Realigned Plaintiff,)
)
LICKING COUNTY BOARD)
OF COMMISSIONERS)
)
Defendant.)
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CONSENT DECREE

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
and)	
)	
THE STATE OF OHIO)	
)	
Realigned Plaintiff,)	
)	CIVIL ACTION No.
v.)	
)	
THE BOARD OF COUNTY)	
COMMISSIONERS,)	
LICKING COUNTY, OHIO,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

WHEREAS Plaintiff United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("U.S.EPA"), has filed a Complaint alleging that the Board of County Commissioners of Licking County, Ohio ("Licking County") has repeatedly violated the Clean Water Act ("Act"), 33 U.S.C. § 1251 et seq., the regulations implementing the Act, the terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") Permit, and an Administrative Order issued by U.S. EPA pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a);

WHEREAS the State of Ohio ("State") has been joined as a Party pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), and has filed a motion to realign and a Complaint against the Board of Commissioners of Licking County alleging that Licking County has repeatedly violated the Act, the regulations implementing the Act, the terms and conditions of its NPDES Permit, and Ohio Revised Code Chapter 6111 and its implementing regulations;

WHEREAS Licking County owns, operates and maintains a Publicly Owned Treatment Works ("POTW") which serves the communities of Buckeye Lake, Harbor Hills, Avondale, and Edgewater Beach in Licking County; Hollywood, Lakeside, West Bank, Liebs Island, South Bank, Shell Beach, Fairfield Beach, and a portion of Custer's Point in Fairfield County; and Custer's Point and Snug Harbor in Perry County;

WHEREAS the United States' and Ohio's Complaints seek the imposition of civil penalties and injunctive relief, alleging that Licking County discharged pollutants from the Buckeye Lake waste water treatment plant ("POTW Treatment Plant" or "Plant") located at 458 Hilton Road, Buckeye Lake, Ohio, into the South Fork of the Licking River in excess of effluent limits authorized by its National Pollutant Discharge Elimination System ("NPDES") Permit Nos. 4PJ00000*DD, 4PJ00000*ED, 4PJ00000*FD , 4PJ00000*GD, and 4PJ00000*HD and the Act, bypassed the POTW Treatment Plant in violation of its NPDES Permit and the Act, violated the monitoring requirements of its NPDES Permit and the Act, and violated the sludge management requirements of its NPDES Permit and the Act;

WHEREAS the Complaints seek the imposition of civil penalties and injunctive relief, alleging that Licking County violated the sludge standards in 40 C.F.R. Part 503 and the Act;

WHEREAS the United States' Complaint seeks the imposition of civil penalties and injunctive relief, alleging that Licking County failed to comply with the Administrative Order issued by U.S. EPA on December 12, 1994 and the Act;

WHEREAS the United States, the State, and the Board of Commissioners of Licking County, Ohio (collectively the "Parties") agree that settlement of this action is in the public interest and have entered into this Consent Decree in good faith to avoid expensive and protracted litigation and to settle the claims raised by the United States and the State. These Parties also agree that this Consent Decree is fair, reasonable, and in the public interest;

WHEREAS it is an express purpose of the Parties in entering into this Consent Decree to further the goals and objectives of the Clean Water Act, which provides, among other things, for the restoration and maintenance of the chemical, physical and biological integrity of the Nation's and the State's waters;

NOW, THEREFORE, before the taking of any testimony, before adjudication of the merits of the case, and with the consent of the Parties, it is ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, and over the Parties, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Act, 33 U.S.C. § 1319(b). The State's claims are also properly before the Court under Section 505 of the Act, 33 U.S.C. 1365, and under the Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367. Venue lies in this District pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and under

28 U.S.C. §§ 1391(b) and 1395(a). For purposes of this Decree, Licking County does not contest the Court's jurisdiction over this action or over Licking County, and it does not contest venue within this judicial district.

2. The Complaints state claims upon which relief may be granted pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and Ohio Revised Code Chapter 6111.

3. Notice of the commencement of this action has been given to the State of Ohio as required by Section 309(b) of the Act, 33 U.S.C. § 1319(b).

II. APPLICATION AND SCOPE

4. This Consent Decree applies to and is binding upon the Parties to this action, as well as Licking County's officials, officers, agents, employees, trustees, successors, assigns, and all persons, firms, consultants, contractors or corporations acting through, for or under the direction and control of Licking County to the extent that they perform or have responsibility to perform, any responsibilities of Licking County under this Consent Decree.

5. Licking County shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree and shall condition all contracts entered into hereunder upon performance of the work in conformity with the terms of this Consent Decree.

6. No later than 45 days prior to the transfer of any ownership interest or operation of the POTW, Licking County shall give written notice of any such planned transfer to U.S. EPA Region 5, the United States Attorney for the Southern District of Ohio, Eastern Division, the

United States Department of Justice, the State of Ohio and the Ohio Environmental Protection Agency ("OEPA") as provided in Section XI (Form of Notice) of this Consent Decree. Licking County shall provide a copy of this Consent Decree to each prospective transferee or successor in interest. Licking County shall also require, as a condition of any such sale or transfer, that the successor or transferee agrees in writing to undertake the obligations required by the Decree and submit to the jurisdiction of this Court for its enforcement. Any such transfer does not relieve Licking County of its obligation to ensure that the terms of the Decree are implemented.

7. In any action to enforce this Consent Decree, Licking County shall not raise as a defense the failure by any of its officers, directors, employees, agents or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

8. It is the express purpose of the parties entering into this Consent Decree to further the goals of the Clean Water Act and Ohio Revised Code Chapter 6111. All obligations in this Consent Decree shall be interpreted in a manner consistent with requiring Licking County to expeditiously achieve, and at all times maintain, full compliance with its NPDES Permit and all applicable federal, state, and local laws and regulations.

IV. DEFINITIONS

9. Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the Clean Water Act, 33 U.S.C. § 1251 et seq., the regulations promulgated thereunder and in Licking County's applicable NPDES Permit. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "POTW Treatment Plant" or "Plant" shall have the same meaning given to that term by 40 C.F.R. Section 403.3 and shall mean the waste water treatment plant Licking County owns and operates at 458 Hilton Road, Buckeye Lake, Ohio;
- b. "Calendar Quarter" shall mean the three-month period ending on March 31, June 30, September 30, and December 31;
- c. "Consent Decree" or "Decree" shall mean this Consent Decree and all exhibits attached hereto;
- d. "Day" shall mean a calendar day unless expressly stated to be a working day; "Working Day" shall mean a day other than a Saturday, Sunday or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or Federal holiday, the period will run until the close of business of the next working day;
- e. "Defendant" shall mean the Board of Commissioners of Licking County, Ohio;
- f. "Effective Date" shall mean the date of entry of this Decree by the Court after satisfaction of the public notice and comment procedures of 28 C.F.R. § 50.7;
- g. "Equalization Basin" shall mean the approximately three (3) million gallon retention basin at the Buckeye Lake POTW Treatment Plant;
- h. "Infiltration" shall mean the water entering a sewer system and service connections from the ground, through means including, but not limited to, defective pipes and sewer walls, pipe and sewer joints, connections, and manhole walls;

- i. "Inflow" shall mean the water discharged into a sewer system, including service connections, from sources including, but not limited to, abandoned building connections, storm drain connections, illegal down spout connections, defective manholes and low and loose manhole lids, foundation drains and/or sump pump connections, and gutter and yard drains into septic tanks;
- j. "Infiltration/Inflow" and "I/I" shall mean infiltration and/or inflow;
- k. "Monthly Operating Report" or "MOR" shall mean the discharge monitoring report which Licking County submits to the OEPA on a monthly basis pursuant to Part III, Section 4 of Licking County's NPDES Permit Nos. 4PJ00000*FD, 4PJ00000*GD (Federal Permit No. OH0039098), and 4PJ00000*HD;
- l. "NPDES Permit" shall mean the National Pollutant Discharge Elimination System ("NPDES") Permit No. 4PJ00000*FD issued to Licking County by OEPA on December 26, 1995, NPDES Permit No. 4PJ00000*GD issued as a modification on June 3, 1996, and NPDES Permit No. 4PJ00000*HD as issued on December 10, 2002, effective January 2, 2003 pursuant to Section 402 of the Act, 33 U.S.C. § 1342, for the Buckeye Lake POTW Treatment Plant and any future, extended, modified or renewal Permit;
- m. "OEPA" shall mean the Ohio Environmental Protection Agency;
- n. "Outfall 001" shall mean the outfall identified as outfall 4JP000000001 in Licking County's NPDES Permit No. Permit Nos. 4PJ00000*FD, 4PJ00000*GD

(Federal Permit No. OH0039098), and 4PJ00000*HD and any modifications or renewals thereof;

- o. "Paragraph" shall mean a portion of this Consent Decree identified by Arabic numerals. "Subparagraph" shall mean a portion of a Paragraph identified by lower case letters;
- p. "Parties" shall mean the United States, the State of Ohio and Defendant;
- q. "Publicly Owned Treatment Works" or "POTW" shall mean a treatment works as defined by Section 212(2) of the Act, 33 U.S.C. § 1292(2), and 40 C.F.R. § 403.3(o);
- r. "Section" shall mean a portion of this Consent Decree identified by Roman numerals;
- s. "State" shall mean the State of Ohio;
- t. "United States" shall mean the United States of America, acting on behalf of U.S. EPA; and
- u. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

V. COMPLIANCE PROGRAM

10. Compliance with NPDES Permit. Except for compliance with the bypass prohibition provisions in its NPDES Permit, Licking County shall achieve and maintain full compliance with all terms and conditions of its NPDES Permit including, but not limited to, the effluent limits and monitoring requirements no later than the date of entry of this Consent Decree. Licking County

shall achieve and maintain full compliance with the bypass prohibition provisions in its NPDES Permit in accordance with the compliance program set forth in Section V of this Consent Decree.

11. Storage Basin(s). Licking County shall continue to use storage basin(s), sufficient to store a minimum of 825,000 gallons, to provide the necessary additional storage capability and eliminate bypasses from the existing equalization basin while a permanent solution is developed and implemented through the corrective action program described in Paragraphs 12 and 14 below. All wastewater stored in these basins shall be redirected to the headworks for full treatment.

12. Corrective Action Plan. No later than December 31, 2004, Licking County shall submit for U.S. EPA and OEPA review and approval a corrective action plan ("CAP"). The CAP shall contain a report, plan and schedules for all capital improvements, maintenance measures and other steps needed to permanently eliminate bypasses from the equalization basin and effluent violations. The CAP shall include, at a minimum:

- a. a POTW Treatment Plant study to specifically define, based on accumulated operating and analytical data, the POTW Treatment Plant's removal efficiencies for its main treatment processes including, but not limited to, the following POTW Treatment Plant equipment:
 - i. the primary clarifier, using weekly suspended solids, ammonia-nitrogen and carbonaceous biochemical oxygen demand (CBOD) tests;
 - ii. the trickling filter, using weekly ammonia-nitrogen and CBOD 5 tests;
 - iii. the secondary clarifier, using weekly suspended solids tests;

- iv. the solids contact tank settleability, using weekly 30-minute settleability tests;
 - v. effluent clarity in the secondary clarifiers, using weekly secchi disk or turbidity measurements; and
 - vi. the sludge blanket depth in the secondary clarifiers, using weekly sludge core measurements; and
- b. a study of existing and future treatment capacity and facilities needs at the Buckeye Lake POTW Treatment Plant which at a minimum analyzes the following factors in determining capacity and treatment needs:
- i. anticipated population growth in the Buckeye Lake area and the possible connection of new areas to the POTW;
 - ii. possible new and more stringent NPDES Permit requirements including effluent limitations, nutrient removal and sludge treatment storage and disposal; and
 - iii. the condition of existing sewers and the results of the infiltration and inflow reduction programs.

Licking County shall implement the CAP according to the procedures and schedules set forth in paragraph 14 below and any additional schedules approved by U.S. EPA and OEPA.

13. **Sewer System Work.** In accordance with the schedule set forth below in this paragraph, Licking County shall repair and/or remove all inflow sources which were identified in the Jobes Henderson & Associates Inc. Smoke Test and Dye Survey Report and the August 1998 I/I Study

including, but not limited to, abandoned building connections, storm drain connections, illegal down spout connections, defective manholes and low and loose manhole lids, foundation drains and/or sump pump connections, and gutter and yard drains into septic tanks which are served by the Buckeye Lake POTW. In addition, Licking County shall remove additional inflow and/or infiltration sources from the sewer system serving the Buckeye Lake POTW whether previously identified or subsequently identified in accordance with the schedule set forth below in this paragraph. The primary objective of all sewer system work is to reduce the peak flow reaching the POTW treatment plant and eliminate the occurrence of bypasses or overflows from the POTW treatment plant particularly those associated with peak flows.

Milestone

Dates

- | | |
|--|-------------------|
| (a) Initiate Additional Flow Monitoring for Collection System in areas tributary to Pump Stations C and E. | February 1, 2003 |
| (b) Complete Flow Monitoring Program for Collection System and submit all flow monitoring data to USEPA/OEPA. | September 1, 2003 |
| (c) Commence Implementation of Inflow/Infiltration (I/I) Abatement Projects and submit prioritized project schedules to U.S. EPA and OEPA for review and approval. Projects shall be prioritized to address removal of largest sources of I/I first. The schedule for projects that require permit to install ("PTI") from OEPA shall include a milestone date for submission of a PTI application as well as dates for commencement and completion of construction. Commencement of such projects may only occur in accordance with the schedule as approved by U.S. EPA and OEPA. When approved the schedule is hereby incorporated into this decree and fully enforceable as if set forth herein. | December 1, 2003 |
| (d) Completion of Final I/I Abatement Project
The primary objective is to reduce peak flow and eliminate overflow activities at the WWTP . | December 1, 2009 |

14a. **Construction of Plant Improvements** In the proposed CAP, Licking County shall include implementation schedules for the construction of improvements needed to ensure the permanent elimination of bypasses from the Buckeye Lake POTW Treatment Plant. Licking County shall submit these schedules with the CAP to OEPA and U.S. EPA for approval by December 31, 2004. Every schedule of implementation shall include the following milestones: construction start date, construction completion date, and the date that the project will be fully operational. To the extent applicable, the schedule of implementation shall also include a milestone for the date of the submission of a complete, approvable application for a permit to install to OEPA. The schedule of implementation shall also include descriptions of how Licking County will obtain the financial resources necessary to complete the improvements in accordance with the approved schedule. No later than 60 days from receipt of approval by U.S. EPA and OEPA, Licking County shall start construction consistent with the CAP and schedules as approved by U.S. EPA and OEPA. Nothing in this Paragraph shall limit the rights of the Parties to mutually agree (in writing) to modifications of the dates initially set forth in the approved schedules of implementation.

14b. In order to increase and improve the waste handling capacity and to ensure consistent operation of the Buckeye Lake POTW, by December 1, 2007, Licking County shall have implemented the approved CAP, taken the following actions, and taken any other actions consistent with the approved CAP:

Milestone

Dates

- | | |
|--|-------------------|
| 1. Submission of Corrective Action Plan pursuant to Paragraph 12 | December 31, 2004 |
|--|-------------------|

2. POTW Treatment Plant Improvements These improvements at the Plant will include the construction of the necessary wet stream and sludge handling facilities to effectively increase the rated capacity of the Plant. All flow reaching the headworks of the Plant will receive full treatment. POTW Treatment Plant Improvements may include, but are not limited to, the construction of a new biological reactor, new final clarifiers, additional sludge digestion and storage facilities and associated electrical and site improvements.

- | | |
|--|------------------|
| (a) Submit Approvable Application for Permit to Install for Plant Improvements. | November 1, 2004 |
| (b) Start Construction of Plant Improvements. | November 1, 2005 |
| (c) Complete Construction of Plant Improvements | October 1, 2007 |
| (d) Complete start-up of Plant Improvements
All of the Plant facilities shall be fully operational. | December 1, 2007 |

14c. By December 1, 2007, Licking County shall: (1) complete construction and implementation of all capital improvements, maintenance measures, and other steps required in accordance with the schedule set forth above and any additional schedules approved pursuant to paragraphs 12 and 13, and 14a; and (2) provide and thereafter maintain the capacity for the POTW treatment plant to provide full treatment to all of the flow entering the headworks of the POTW treatment plant.

15. Preventive Maintenance Program Plan and Manual. No later than 45 days after the entry of the Consent Decree, Licking County shall submit for U.S. EPA and OEPA review and approval a Preventive Maintenance Program (PMP) to ensure maintenance and continued operation of the wastewater collection system, the POTW Treatment Plant and sludge process controls on a day-by-day basis, in compliance with the Act and Licking County's NPDES Permit. The PMP shall be incorporated into the POTW operations and maintenance manual. No later than 60 days after receipt of approval by U.S. EPA and OEPA, Licking County shall implement the PMP according to the procedures and schedules set forth therein. The PMP shall include:

- a. procedures and tasks necessary for a regular sewer maintenance and inspection program to continue identification of and removal of all sources of I/I from the sanitary sewers served by the Buckeye Lake POTW Treatment Plant;

- b. schedules and procedures for preventive and routine maintenance, physical inspection and equipment testing for the POTW Treatment Plant;
- c. procedures for retention of inspection reports along with, where appropriate, photographs or videos of appurtenances, in the wastewater treatment works' operating logs;
- d. schedules and procedures for periodic service and calibration of all instrumentation such as flow meters, and field sampling and laboratory equipment;
- e. schedules and procedures for routine inspection and service of all equipment including pumps and back-up generators;
- f. sludge handling plans including activated sludge process control training and proper land application procedures;
- g. an explanation of current staffing, organization, and resource commitment;
- h. an inventory management system for spare parts and emergency equipment, including back-up systems for pumps and generators;
- i. a centralized tracking system for all maintenance activities;
- j. a sanitary sewer map superimposed on a map of the entire area served by the POTW Treatment Plant;
- k. a storm sewer map superimposed on a map of the entire area served by the POTW Treatment Plant;
- l. identification of each area of the sanitary sewer system and rights-of-way designated for periodic inspection and maintenance (smoke testing, flow analysis, televising, grouting, replacement, manhole repair, etc.) The areas should be divided into equal or manageable parts to ensure complete and regular inspection and maintenance; and
- m. using a 5 year time line, a systematic approach that provides efficient and effective maintenance for the sanitary sewer system and replacement tasks for any areas with excessive I/I or other identified problems. The specific tasks to be performed (and the date of task completion) shall be documented in records maintained at the wastewater treatment plant.

16. Licking County shall take all lawful and appropriate actions to facilitate the implementation of this Consent Decree, including prompt review and approval of any bids, contracts, or other documents, and, if applicable, prompt review and approval of any schedule or work necessary to maintain compliance with this Consent Decree.

VI. APPROVAL OF PLANS AND OTHER DOCUMENTS PREPARED PURSUANT TO SECTION V (COMPLIANCE PROGRAM)

17. Upon review of any plan, report, manual, document, or other item which Licking County is required to submit for approval by U.S. EPA and OEPA pursuant to this Consent Decree, U.S. EPA and OEPA may approve the submission or decline to approve the submission and provide comments.

18. No later than thirty (30) days after receiving comments from U.S. EPA and OEPA, Licking County shall modify the submission consistent with those comments and resubmit the plan, report, manual, document, or other item to U.S. EPA and OEPA for final approval.

19. If Licking County fails to modify the submission consistent with the comments of U.S. EPA and OEPA and resubmit it to U.S. EPA and OEPA within thirty (30) days of receiving such comments, U.S. EPA and OEPA may (a) approve the plan, in whole or in part; (b) disapprove the plan, in whole or in part; (c) approve the plan upon specified conditions, directing that Licking County modify its submission; or (d) any combination of the above.

20. Approval of any submission in whole or in part, or upon specified conditions, by either U.S. EPA or OEPA, or completion of any submission in whole or in part, or upon specified

conditions, under this Consent Decree shall not be construed as compliance with the Clean Water Act, Ohio Revised Code Chapter 6111 or Licking County's applicable NPDES Permit.

21. Upon the approval, or partial approval, by U.S. EPA and OEPA of a submission, Licking County shall immediately proceed to take any action required by the plan, report, manual, document, or other item as approved by U.S. EPA and OEPA.

22. All plans, reports, manuals, document, and other items required to be submitted to U.S. EPA and OEPA for review and approval under this Consent Decree, shall be enforceable under this Consent Decree upon approval by U.S. EPA and OEPA.

VII. FUNDING

23. Compliance with the terms of this Consent Decree by Licking County is not conditioned on the receipt of federal or state grant or loan funds or upon Licking County's financial capabilities. In addition, failure to comply is not excused by the lack of federal or state grant or loan funds, or by the processing of any applications for the same, or by Licking County's financial capabilities.

VIII. REPORTING

24. During the term of this Consent Decree, Licking County shall submit to U.S. EPA, Region 5, all reports Licking County is required to submit to OEPA by its applicable NPDES Permit, including MORs and reports of bypass and overflow events at the same time such reports are due to OEPA.

25. Beginning with the end of the next full calendar quarter after entry of this Consent Decree and for every calendar quarter thereafter until this Consent Decree terminates in accordance with Section XXVI (Termination) below, Licking County shall submit quarterly written status reports (“Quarterly Reports”) to U.S. EPA and OEPA within 30 days after the end of each calendar quarter.

26. The Quarterly Reports shall include a description of all significant maintenance and repair activities that occurred during the quarter, an itemized list of any components not in full working condition, and a list of major expenditures incurred for repairs and maintenance during the quarter. The Quarterly Reports shall also include a description of any changes in POTW staffing. The Quarterly Reports shall include a detailed description of the progress made during the quarter, and a projection of work to be completed during the next quarter, to achieve compliance with the terms of this Consent Decree.

27. If Licking County violates any requirement of this Consent Decree or of any applicable permits, Licking County shall notify the United States and the State of such violation and its likely duration in writing within ten (10) working days of the day Licking County first becomes aware of the violation, with an explanation of the violation’s likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Licking County shall include a statement to that effect in the report. Licking County shall immediately investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of

the cause of the violation, within thirty (30) days of the day Licking County becomes aware of the cause of the violation

28. All reports shall be submitted to the persons designated in Section XI of this Consent Decree (Form of Notice).

29. In any civil proceeding to enforce this Consent Decree, Licking County shall not object to the accuracy, authenticity, and admissibility in evidence of any information or reports submitted pursuant to this Consent Decree including, but not limited to, MORs, Quarterly Progress Reports, and reports of bypass and overflow events.

30. Compliance with the reporting requirements of this Consent Decree shall not relieve Licking County of any other reporting requirements imposed by the Act or by any other federal, state or local law or regulation, or its NPDES Permit.

IX. PRE-ENTRY OBLIGATIONS

31. Any provision of this Consent Decree that requires performance on a date prior to the entry of this Consent Decree shall, upon entry of the Consent Decree, be binding retroactively and Licking County shall be liable for stipulated penalties pursuant to Section XIII (Stipulated Penalties) for failure to meet any such requirement by the date specified herein.

X. CERTIFICATION OF SUBMISSIONS

32. Each report, plan, document or other submission that Licking County is required to submit to U.S. EPA Region 5 and OEPA pursuant to this Consent Decree including reports, plans or other submissions that Licking County is also required to submit pursuant to its NPDES

Permit, shall be signed by a Licking County commissioner or a designee authorized to sign on behalf of a commissioner and shall include the following certification:

I certify, under penalty of law, that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

XI. FORM OF NOTICE

33. Except as otherwise specified, whenever written notification to or communication (including all reports) with the United States, U.S. EPA Region 5, the State of Ohio, OEPA, or Licking County is required or necessary by the terms of this Consent Decree, it shall be addressed as set forth below.

As to the United States Department of Justice (DOJ):

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Post Office Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611

As to the United States Attorney:

Office of the United States Attorney
for the Southern District of Ohio
Eastern Division
2 Nationwide Plaza
280 North High Street, 4th Floor
Columbus, Ohio 43215

As to U.S. EPA:

Chief, Water Enforcement and Compliance Assurance Branch
Water Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd (WC-15J)
Chicago, Illinois, 60604

Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson, Blvd.(C-14J)
Chicago, Illinois 60604

As to the State of Ohio:

Chief, Environmental Enforcement Section
Office of the Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

Enforcement Coordinator
Division of Surface Water
Ohio Environmental Protection Agency
122 South Front Street
P.O. Box 1049
Columbus, Ohio 43216-1049

As to Licking County:

Licking County Commissioners
20 South Second Street
Newark, Ohio 43055

34. Notices submitted pursuant to this Section shall be deemed effective upon receipt, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XII. CIVIL PENALTY

35. No later than thirty (30) days after entry of this Consent Decree, Licking County shall pay a civil penalty in the amount of \$37,500, to the United States. Payment shall be made by Fed Wire Electronic Funds Transfer ("EFT") to the United States Department of Justice in accordance with instructions provided to Licking County by the Financial Litigation Unit of the U.S. Attorney's Office in the Southern District of Ohio. Any EFTs received after 11:00 a.m. (EST) shall be credited on the next business day. At the time of payment, Licking County shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference U.S.A.O. file number 2004Z00901 and DOJ case number 90-5-1-1-4500 to the United States in accordance with Section XI of this Decree (Form of Notice).

36. In accordance with the Debt Collection Act of 1982, 31 U.S.C. § 3717, and 40 C.F.R. § 13.11, Licking County shall be subject to three forms of late charges in the event of late payment of the civil penalty required to be paid under this Section or stipulated penalties required to be paid under Section XIII (Stipulated Penalties), below. One, Licking County shall pay an interest charge on any unpaid penalties that are due and payable under this Section or Section

XIII (Stipulated Penalties) at the rate of the current value of funds to the U.S. Treasury (i.e., the Treasury tax and loan account rate), accruing on the date payment was due and payable beginning on the 31st day after payment was due, unless paid prior to that date. Two, Licking County shall pay an administrative costs (handling) charge of fifteen dollars (\$15) for each month past the due date specified by this Consent Decree that it does not pay the penalty in full. Three, in addition to the previous two charges, Licking County shall pay late fees on any unpaid penalty amount still due and payable more than ninety (90) days past the date due. Late fees shall accrue at the rate of six (6) percent per annum and shall be assessed monthly. Interest and handling charges as provided for in this Paragraph shall be tendered along with any late penalty payments in the manner specified above. The United States shall be entitled to collect the costs (including attorneys fees) incurred in any action necessary to collect any portion of the civil penalty, stipulated penalty, interest, or late payment costs or fees.

37. No later than thirty (30) days after entry of this Consent Decree, Licking County shall pay a civil penalty in the amount of \$37,500, to the State. Payment to the State shall be made by certified check for the appropriate amount, made payable to "Treasurer, State of Ohio," which check shall be delivered by mail, or otherwise, to Amy Laws, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

XIII. STIPULATED PENALTIES

38. Effluent Limitations. This Paragraph shall apply to: (i) any failure to comply with the effluent limitations applicable to Outfall 001 (or any future Outfalls that may serve as principal discharge points for the POTW Treatment Plant); and, (ii) any failure to comply with the effluent limitations that may apply in any future plans and studies required by this Consent Decree.

a. Daily Limitations. For each exceedance of a daily effluent limitation for any parameter in its applicable NPDES Permit, Licking County shall pay:

<u>Period of Noncompliance</u>	<u>Penalty per Exceedance of the Daily Limit</u>
i. For the first exceedance of a parameter	\$ 750.00
ii. For the second exceedance of the same parameter	\$ 1,500.00
iii. For the third and subsequent exceedances of the same parameter	\$ 3,000.00

b. Seven-Day Average Limitations. For each exceedance of a seven-day average effluent limitation for any parameter in its applicable NPDES Permit, Licking County shall pay:

<u>Period of Noncompliance</u>	<u>Penalty per Exceedance of the 7 day average</u>
i. For the first exceedance of a parameter	\$ 1,000.00
ii. For the second exceedance of the same parameter	\$ 2,000.00
iii. For the third and subsequent exceedances of the same parameter	\$ 4,000.00

c. Monthly Average Limitations. For each exceedance of a monthly average effluent limitation for any parameter in its applicable NPDES Permit, Licking County shall pay:

<u>Period of Noncompliance</u>	<u>Penalty per Exceedance of the Monthly Average</u>
i. For the first exceedance of a parameter	\$ 2,000.00
ii. For the second exceedance of the same parameter	\$ 5,000.00
iii. For the third and subsequent exceedences of the same parameter	\$ 8,000.00

d. For purposes of calculating stipulated penalties pursuant to this Paragraph, an exceedance of a seven-day average effluent limitation shall constitute one exceedance, not seven exceedances; an exceedance of a monthly average effluent limitation shall constitute one exceedance, not thirty exceedances.

39. Bypasses and Overflows.

a. For each bypass in violation of Licking County's applicable NPDES Permit, which occur anytime prior to the completion of the Plant Improvements (referenced in Paragraph 14b. of this Consent Decree) but no later than December 1, 2007, in addition to any amounts payable pursuant to the previous Paragraphs for effluent limitation exceedances, Licking County shall pay \$4000.00.

b. For each bypass in violation of Licking County's applicable NPDES Permit, which occur anytime after the completion of the Plant Improvements (referenced in Paragraph 14b. of this Consent Decree), in addition to any amounts payable pursuant to the previous Paragraphs for effluent limitation exceedances, Licking County shall pay:

First violation during the term of the Decree	\$ 5,000.00
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Second violation during the term of the Decree. . . . \$ 7,500.00

Third and subsequent violations during the

term of the Decree. \$ 15,000.00

40. Other Terms and Conditions in NPDES Permit. For each failure to comply with the terms and conditions of Licking County's current NPDES Permit and any modifications or renewals to that Permit, the failures of which are not subject to stipulated penalties pursuant to specific provisions of this Section, Licking County shall pay stipulated penalties as follows:

a. Non-continuous Discrete Violations of the NPDES Permit.

For each non-continuous, discrete failure to comply with a specific term or condition of its NPDES Permit, Licking County shall pay a stipulated penalty of \$500.00 per violation.

b. For Continuous Violations of the Same Term or Condition of the NPDES Permit.

<u>Period of Noncompliance</u>	<u>Penalty per Each 7 Day Period or Portion thereof</u>
First 7 Day Period	\$ 500.00
Second and Third 7 Day Period	\$ 750.00
Fourth, Fifth, Sixth, and Seventh 7 Day Period	\$ 1,000.00
Each 7 Day Period after the Seventh 7 Day Period	\$ 1,250.00

For example, for purposes of calculating stipulated penalties pursuant to this Subparagraph, the first seven days of a continuing violation of the same term or condition shall result in a total penalty of \$500.00. If, for example, a continuing violation lasts for twenty-five days, the total penalty shall be \$3,000 (calculated as follows: \$3,000.00 = \$500.00 for the first seven days) + (2

x \$750.00 for the next two seven day periods) + (\$1,000.00 for the carryover into the fourth seven day period).

41. Violations of Section V (Compliance Program). Licking County shall pay stipulated penalties, as set forth below, for each day that Licking County fails to meet a milestone date specified in Paragraphs 11 through 16, above, of this Consent Decree. If the due date falls on a holiday or weekend, the due date shall be the following business day. The stipulated penalties for failure to meet such milestone date shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1 to 30	\$ 500.00
Days 31 to 60	\$ 1,000.00
Days 61 and over	\$ 1,500.00

Provided that Licking County begins construction of a project at or before the construction start date required in an approved implementation schedule, meets the construction completion date required in an approved implementation schedule and begins operation at or before the date required in an approved implementation schedule, Licking County shall not be required to pay stipulated penalties for failure to meet an interim construction deadline.

42. Reporting. Licking County shall pay stipulated penalties, as set forth below, for each day that Licking County fails to submit any report required under Section VIII (Reporting) of this Consent Decree. If a due date falls on a holiday or weekend, the due date shall be the following business day. The stipulated penalties for failure to meet such reporting dates shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1 to 30	\$ 300.00
Days 31 to 90	\$ 600.00
Days 91 and over	\$ 1,000.00

43. Payment of stipulated penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States, the State of Ohio or their respective agencies by reason of Licking County's failure to comply with the requirements of this Consent Decree or all applicable federal, state or local laws, regulations, waste water discharge permit(s) and all other applicable permits. However, in the event that the United States seeks statutory penalties for a violation of any requirement of this Decree for which Licking County previously has paid a stipulated penalty, the amount of the statutory penalty shall be reduced by the amount of the stipulated penalty previously paid.

44. The payment of stipulated penalties shall not be construed so as to relieve Licking County from specific compliance with this Decree or federal or state law, or limit the authority of the United States, U.S. EP/, the State of Ohio or OEPA to require compliance with such laws. The United States and State of Ohio are specifically authorized to seek injunctive relief in this civil action to address any violation of this Consent Decree.

45. Stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree, regardless of whether or not U.S. EPA or OEPA has made a written demand for payment of such penalties. Fifty percent (50%) of the penalty shall be paid to the United States and fifty percent (50%) of the penalty shall be paid to the State of Ohio.

46. Stipulated penalties owed to the United States shall, as directed by the United States, be paid by EFT or by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-06501 and United States Attorney's

Office file number 2004Z00901, and delivered to the office of the United States Attorney, Southern District of Ohio, Financial Litigation Unit, 303 Marcony Boulevard, Columbus, OH 43215. The transmittal letter accompanying the EFT or check shall specify the caption and docket number of this action and shall include a description of the violation(s) of the Consent Decree or NPDES Permit, including the date of violation(s), for which stipulated penalties are being paid.

47. Stipulated penalties owed to the State shall be paid by certified check for the appropriate amount, made payable to "Treasurer, State of Ohio," which check shall be delivered by mail, or otherwise, to Amy Laws, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The transmittal letter accompanying the check shall specify the caption and docket number of this action and shall include a description of the violation(s) of the Consent Decree or NPDES Permit, including the date of violation(s), for which stipulated penalties are being paid.

48. The existence of a dispute shall not excuse, toll or suspend any obligation or deadline established by this Consent Decree or any stipulated penalties which accrue as a result of a failure to meet any requirement of this Consent Decree.

49. All stipulated penalties must be paid within forty-five days of the date of violation. At the same time that stipulated penalties are paid, Licking County shall transmit a copy of any payment made pursuant to Paragraphs 35 through 37 of this Consent Decree and the transmittal letter accompanying payment to the United States and the State of Ohio at the addresses set forth in Section XI (Form of Notice).

50. Upon the Date of Entry of this Consent Decree, stipulated penalties for violations of applicable NPDES permit requirements, missed deadlines, or other noncompliance occurring

between the Date of Lodging and the Date of Entry of this Consent Decree shall be payable pursuant to the terms of this Section.

51. Should Licking County fail to pay stipulated penalties in accordance with the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961, together with the costs (including attorneys fees) incurred in any action necessary to collect any such stipulated penalties or interest thereon.

52. Subject to the provisions of Section XIX of this Consent Decree (Effect), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States and/or the State of Ohio by reason of Licking County's failure to comply with any requirement of this Consent Decree or applicable law.

53. Payment of stipulated penalties as set forth above shall be in addition to any other rights or remedies that may be available to the United States, the State, or their agencies by reason of Licking County's failure to comply with requirements of this Consent Decree, and all applicable Federal, state or local laws, regulations, NPDES permit(s) and all other applicable permits. The payment of such stipulated penalties shall not be construed to relieve Licking County from specific compliance with this Decree or applicable federal or state law, nor shall it limit the authority of U.S. EPA or Ohio to require compliance with such laws.

XIV. POTENTIAL FORCE MAJEURE

54. If any event occurs that delays or may cause the delay of the completion of any requirement of this Consent Decree or causes or is likely to cause Licking County to violate any provision of this Consent Decree, whether or not due to a potential Force Majeure event, Licking County shall so notify the United States and the State of Ohio pursuant to Section XI (Form of Notice) of this Consent Decree, in writing, within ten (10) business days of the event. The notice

shall reference this Section of the Consent Decree and shall describe in detail the bases for Licking County's contention that it experienced a potential Force Majeure event, the nature and causes of the violation or delay, all measures taken or to be taken by Licking County to prevent or minimize the noncompliance, delay or event, and the timetable by which those measures will be implemented. Failure to so notify the United States and the State of Ohio shall constitute a waiver of any claim of Force Majeure as to the event in question.

55. In any action by the United States or the State of Ohio to enforce any of the provisions of this Consent Decree, Licking County may raise at that time that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control or the control of any entity controlled by Licking County, including its consultants and contractors. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Licking County and the Plaintiff Parties that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate time at which to adjudicate the existence of such a defense is at the time that an enforcement action is commenced by the United States and/or the State of Ohio. At that time the burden of proving that any potential force majeure event was or will be caused by circumstances entirely beyond Licking County's control or the control of any entity controlled by Licking County, including its consultants and contractors shall rest with Licking County. Nothing in this Section is intended to relieve Licking County of its duty to use all due diligence to complete the requirements of this Consent Decree in a timely matter or of Licking County's obligation to meet all discharge limitations and other obligations contained in Licking County's NPDES Permit. Unanticipated or increased costs or expenses associated with the implementation of this Consent Decree, technical infeasibility, or changed financial circumstances are not Force Majeure events. Failure to apply for a required permit or approval,

or to provide in a timely manner all information required to obtain a permit or approval necessary to meet the requirements of this Decree, are not Force Majeure events. Violations of discharge or effluent limitations are not subject to Force Majeure claims. An extension of one compliance date based on a particular event does not extend the time for performance of any other obligation. Licking County must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

XV. DISPUTE RESOLUTION

56. Any dispute which arises between Licking County and the United States with respect to the meaning, application, or implementation of any of the requirements of this Consent Decree, shall be, in the first instance, the subject of informal negotiations between those Parties to attempt to resolve such disputes. Such period of informal negotiations shall not extend beyond thirty (30) days of the date when notice of a dispute is given by one Party to the other, unless both Parties have agreed in writing to extend that period. After informal negotiations, if Licking County and the United States are unable to agree upon the meaning or application of the requirements of this Consent Decree, then Licking County shall comply with the position taken by the United States, subject only to Licking County's right to petition the Court as set forth in Paragraph 57, below.

57. Within thirty (30) days after the end of the informal negotiations period for resolution of the dispute set forth in Paragraph 56, above, Licking County may petition the Court for relief. Such petition shall set forth the nature of the dispute and proposal for its resolution. The United States shall have thirty (30) days to respond to the petition and propose an alternate resolution. In any such dispute, Licking County shall bear the burden of demonstrating that its actions or positions taken are in accordance with and will assure Licking County's compliance with the

terms, conditions, requirements, and objectives of this Consent Decree and the Clean Water Act. Applicable principles of law regarding the standard of review shall apply.

58. The invocation of dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Licking County under this Consent Decree not directly in dispute. For ongoing violations, stipulated penalties with respect to the disputed matter shall continue to accrue but payment to the United States and the State shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree until such noncompliance ceases. In the event that Licking County does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XII (Stipulated Penalties) of this Consent Decree.

XVI. RIGHT OF ENTRY

59. Until termination of this Consent Decree, the United States, the State, and their representatives, including contractors, consultants and attorneys, shall have the right of entry into and upon Licking County's POTW, at all reasonable times and upon presentation of credentials, for the purpose of:

- (A) monitoring the progress of activities required by this Consent Decree,
- (B) verifying any data or information submitted to U.S. EPA or OEPA by Licking County pursuant to this Consent Decree,
- (C) obtaining samples and, upon request, splits of any samples taken by Licking County or its consultants, and
- (D) otherwise assessing Licking County's compliance with this Consent Decree.

60. This Consent Decree shall not be construed to limit or affect in any way the rights of the United States or U.S. EPA to inspect, enter, examine, copy records, take samples, and otherwise monitor Licking County's POTW, as provided by any federal statute, regulation, or permit.

61. This Consent Decree shall not be construed to limit or affect in any way the rights of the State of Ohio or OEPA to inspect, enter, examine, copy records, take samples, and otherwise monitor Licking County's POTW, as provided by state statute, regulation or permit.

XVII. RECORDKEEPING

62. Until five (5) years after the termination of this Consent Decree, Licking County shall retain, and shall instruct its representatives, contractors and consultants to preserve, all non-identical copies of all records and documents (including records or documents in electronic form) now in its or its representatives', contractors' or consultants' possession or control, or that come into its or its representatives', contractors' or consultants' possession or control, and that relate in any manner to Licking County's performance of its obligations under this Consent Decree. This record retention requirement shall apply regardless of any document-retention policy of Licking County to the contrary.

63. At the conclusion of the document-retention period provided in the preceding Paragraph, Licking County shall notify the United States and the State at least ninety (90) days prior to the destruction of any records or documents subject to the requirements of the preceding Paragraph, and, upon request by the United States or the State, Licking County shall deliver any such records or documents to U.S. EPA or OEPA. Licking County may assert that certain

documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Licking County asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Licking County. However, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

XVIII. PERMIT OBLIGATIONS

64. This Consent Decree does not authorize or approve the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval of such construction or modification shall be as required by applicable county, state, or federal laws or regulations, including applicable requirements of Ohio law with regard to permits to install.

65. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, nor shall it be interpreted to be such. This Consent Decree does not relieve Licking County of any obligation to apply for, obtain and comply with the requirements of any new or existing NPDES Permit or to comply with any federal, state or local laws or regulations.

XIX. EFFECT

66. This Consent Decree constitutes full and final settlement of the civil claims of the United States and the State of Ohio for the violations alleged in the Complaints that was filed in this action through the date of lodging.

67. This Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Act, or under other federal or State laws, regulations, or permit conditions, except as expressly specified herein.

68. Licking County is responsible for achieving and maintaining complete compliance with all applicable federal, State and local laws, regulations, and permits; and Licking County's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations or permits.

69. This Consent Decree does not limit or affect the rights of Licking County or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Licking County.

70. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

71. The United States and the State of Ohio reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

XX. NON-WAIVER PROVISIONS

72. By entering into this Consent Decree, the United States and the State of Ohio do not warrant or aver in any manner that Licking County's compliance with any aspect of this Consent

Decree will result in compliance with provisions of the Act, 33 U.S.C. § 1251 et seq., and/or Ohio Revised Code Chapter 6111. Notwithstanding the United States' or the State's review and approval of any documents submitted to it by Licking County pursuant to this Consent Decree, Licking County shall remain solely responsible for compliance with the terms of the Act, the rules and regulations promulgated thereunder, Ohio Revised Code Chapter 6111, the rules and regulations promulgated thereunder, and this Consent Decree.

73. Nothing in this Consent Decree shall be interpreted as relieving Licking County from its obligation to comply with its NPDES Permit and with all applicable federal, state and local laws, regulations and permits. Notwithstanding any U.S. EPA or OEPA review that may occur, Licking County shall remain solely responsible for its compliance with the terms of the Consent Decree and with all applicable laws, regulations and permits. This Consent Decree does not relieve Licking County of its obligation to obtain all required permits and approvals under state, federal and local law, including obtaining permits to install and/or planned approvals from OEPA.

74. The United States and the State of Ohio expressly reserve, and nothing herein shall be construed to limit, their right to pursue all remedies available for violations of any federal or state laws or regulations not specifically pleaded in the Complaints filed in this matter.

75. This Consent Decree shall not be construed to limit the rights of the United States or the State of Ohio to undertake any criminal enforcement activity against any person or entity.

76. This Consent Decree shall not be construed to limit the authority of the United States or the State of Ohio to undertake any actions in response to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment.

77. Licking County's execution of this Consent Decree shall not be construed as an admission by Licking County of any facts that would limit or affect any right Licking County may have to seek or receive State or Federal loan or grant funds.

XXI. COSTS OF SUIT

78. The parties shall each bear their own costs of litigation of this action, including attorneys fees, except as provided in Paragraph 36, above.

XXII. PUBLIC COMMENT

79. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States and the State of Ohio reserve the right to withdraw or withhold consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Licking County consents to entry of this Consent Decree without further notice.

XXIII. RETENTION OF JURISDICTION

80. The Court shall retain jurisdiction of this case until termination of this Consent Decree, for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes.

Such jurisdiction shall not terminate until all requirements of this Consent Decree have been completed, all penalties have been paid in full, and all disputes arising under this Consent Decree have been resolved.

XIV. MODIFICATION

81. This Consent Decree constitutes the final, complete and exclusive agreement between the Parties with respect to the settlement embodied in the Decree and supersedes all prior oral or written agreements, representations or understandings. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

82. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

83. Notwithstanding the preceding Paragraph, nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, construe, or modify this Consent Decree, as necessary to further its objectives.

XXV. CERTIFICATION OF COMPLETION

84. After Licking County has achieved full compliance with all provisions of its NPDES permit and has maintained such compliance for 24 consecutive months, has achieved full compliance with all other provisions contained in this Consent Decree, has paid in full all civil penalties and stipulated penalties due under this Consent Decree, and there are no outstanding

disputes between the parties or pending before the Court pursuant to the Dispute Resolution provisions of this Consent Decree, Licking County shall submit to the United States and the State of Ohio a Request for Certification of Completion. The Request for Certification of Completion shall contain supporting documentation demonstrating that Licking County has successfully completed all requirements of this Consent Decree and that all other requisite conditions for termination of the Consent Decree have been satisfied.

85. Following receipt by the United States and the State of Licking County's Request for Certification of Completion, the Parties shall schedule one or more conferences (which may be by telephone) to discuss the Request for Certification of Completion and any disagreement that the Parties may have as to whether Licking County has satisfactorily complied with the requirements of the Consent Decree. Such period of consultation shall continue for no less than 30 days following receipt of Licking County's Request for Certification of Completion. In addition, U.S. EPA and OEPA may request, and Licking County shall allow, an inspection of the POTW during this consultation period.

86. If, after the consultation period, U.S. EPA and OEPA determine that any of the requirements of this Consent Decree are incomplete or have not been met, U.S. EPA and OEPA will notify Licking County in writing of the activities that must be undertaken to complete the requirements of this Consent Decree. U.S. EPA and OEPA may set forth a schedule for performance of such activities, or may require Licking County to submit a schedule to U.S. EPA and OEPA for review and approval. Licking County shall perform all such activities in accordance with the schedules established or approved by U.S. EPA and OEPA. Approval of a

schedule for the performance of additional activities under this paragraph shall not be interpreted as an extension of deadlines originally approved by U.S. EPA and OEPA for any obligations under this Consent Decree. Any approved scheduled for performance of additional activities shall be incorporated in this Consent Decree, and it shall be completed by Licking County in accordance with the requirements of this Consent Decree. Following completion of these activities, Licking County shall submit a revised Request for Certification of Completion of the Consent Decree.

87. If U.S. EPA and OEPA conclude, based on the initial or any subsequent Request for Certification of Completion of the Consent Decree, that all of the requirements of the Consent Decree have been fully met, U.S. EPA and OEPA will notify Licking County in writing, and such notice shall constitute the Certification of Completion of the Requirements of the Consent Decree.

XXVI. TERMINATION

88. Following the issuance of the Certification of Completion pursuant to Section XXV of this Consent Decree, the Parties shall move jointly to terminate this Consent Decree. Based on the Parties' representation that all its requirements have been satisfied, the Court may order termination of the Consent Decree, except for the requirements of Section XVII (RecordKeeping) which shall terminate pursuant to the terms of that Section, after conducting such inquiry as it deems appropriate.

XXVII. EFFECTIVE DATE

89. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the court.

XXVIII. SIGNATORIES/SERVICE

90. Each undersigned representative of Licking County, the State and the United States certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

91. Licking County hereby agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Licking County in writing that it no longer supports entry of the Decree.

92. Licking County hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIX. FINAL JUDGMENT

93. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States, the State and Licking County. The Court finds that there is no just reason for delay and therefore enters this judgment as a final

judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, 2005.

United States District Judge

The undersigned party enters into this Consent Decree in the matter of United States and the State of Ohio v. Licking County, Ohio (S.D. Ohio)

FOR THE UNITED STATES

Date: _____

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural
Resources Division
U.S. Department of Justice

ESPERANZA ANDERSON
Trial Attorney
Environmental Enforcement Section
Environment and Natural
Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

The undersigned party enters into this Consent Decree in the matter of United States and the State of Ohio v. Licking County, Ohio (S.D. Ohio)

United States Attorney
Southern District of Ohio

Date: _____ By: _____

Assistant United States Attorney
Southern District of Ohio
Eastern Division
2 Nationwide Plaza
280 North High Street, 4th Floor
Columbus, Ohio 43215

The undersigned party enters into this Consent Decree in the matter of United States and the State of Ohio v. Licking County, Ohio (S.D. Ohio)

Date: 2/25/05

BHARAT MATHUR
Acting Regional Administrator
Region 5
U.S. Environmental Protection
Agency
77 W. Jackson Blvd.
(Mail Code R-19J)
Chicago, IL 60604

Date: 2/17/05

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Date: 2/17/05

THOMAS V. SKINNER
Assistant Administrator of Enforcement
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United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
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The undersigned party enters into this Consent Decree in the matter of United States and the State of Ohio v. Licking County, Ohio (S.D. Ohio)

FOR THE STATE OF OHIO

JIM PETRO
Attorney General of Ohio

Date: _____

By:

MARGARET A. MALONE (# 0021770)
Assistant Attorney General
Environmental Enforcement Section
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The undersigned party enters into this Consent Decree in the matter of United States and the State of Ohio v. Licking County, Ohio (S.D. Ohio)

FOR DEFENDANT LICKING COUNTY, OHIO

DATE: February 7, 2005

Name

Vice-President

Position

Marcia J. Phelps

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Agent Authorized to Accept Service on Behalf of Above-signed Party:

Michael Smith
Clerk-Licking County Commissioners

20 S. Second St. Newark, OH 43055
